

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SOUTHEASTERN PIPE TRADES)
HEALTH AND WELFARE FUND)
)
v.) NO. 3-13-0809
) JUDGE CAMPBELL
FRIEDMAN, RODMAN &)
FRANK, P.A., et al.)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 121), Objections filed by Defendants Friedman, Rodman & Frank, P.A. and Henry R. Ostendorf (Docket No.123), to which Plaintiff has responded (Docket No. 125); and Objections filed by Plaintiff (Docket No. 124), to which no Response is filed. Neither Defendant Ellis (Administrator for the Estate of Donna Ostendorf) nor Third-Party Defendants Tami Jones and Lisa Jones filed Objections to the Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, the Response and the file. For the reasons stated herein, the Report and Recommendation is ADOPTED and APPROVED.

The Magistrate Judge recommended that Plaintiff's Motion for Summary Judgment (Docket No. 87) should be granted in part and that the Administrator of Ms. Ostendorf's Estate should be ordered to pay to Plaintiff the sum of \$140,531.68, representing medical expenses which Plaintiff paid on Ms. Ostendorf's behalf. The Magistrate also recommended that Mr. Ostendorf be ordered to pay to Plaintiff the sum of \$6,221.79, representing medical expenses which Plaintiff paid on his behalf. Mr. Ostendorf does not dispute that he owes this amount. The Magistrate recommended that

Plaintiff's Motion for Summary Judgment be denied as moot as to Defendant Friedman, Rodman & Frank, P.A.

As noted, neither the Administrator nor the Third-Party Defendants have objected to the Magistrate's Report and Recommendation. The Report and Recommendation as to them is adopted and approved.

Defendants Friedman, Rodman & Frank, P.A. and Mr. Ostendorf filed an Objection to the Magistrate Judge's recommendation that the Estate be ordered to pay \$140,531.68 to the Plaintiff. Defendants Friedman, Rodman & Frank, P.A. and Mr. Ostendorf, however, have no standing to object to the recommendation of judgment against the Defendant Administrator. The Magistrate recommends *denying* summary judgment against the law firm, a recommendation to which the law firm does not object. The Report and Recommendation does not order the law firm to take any action.

Neither the law firm nor Mr. Ostendorf is a beneficiary of the Estate. Neither the law firm nor Mr. Ostendorf can assert claims or defenses for the Administrator or the Third-Party Defendants, who are beneficiaries of the Estate. The Court agrees that the law firm and Mr. Ostendorf have no standing to object to the recommendations as to the Administrator or as to the Third-Party Plaintiffs.

Mr. Ostendorf does have standing to object to the recommendation that he pay monies back to the Plaintiff, but he does not so object. Accordingly, the Magistrate Judge's Report and Recommendation is adopted and approved as to Mr. Ostendorf and as to law firm.

With regard to Friedman, Rodman & Frank, Plaintiff objects to the recommendation that the claims against the law firm are moot and argues that the law firm should be held jointly and severally liable for the amounts owed the Plaintiff. The law firm no longer has the money at issue,

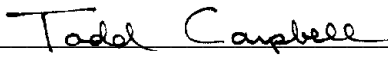
having turned those checks over to the Estate. The law firm never had a right to that money. The money from which Plaintiff seeks recovery belongs to the Estate of Ms. Ostendorf, and the Estate has not objected to the recommendation that it be ordered to pay the money to Plaintiff. The objection of the Plaintiff on this issue is overruled, and the Report and Recommendation is adopted and approved as to the recommendation about the law firm.

CONCLUSION

For all these reasons, the Report and Recommendation of the Magistrate Judge (Docket No. 121) is ADOPTED AND APPROVED. Plaintiff's Motion for Summary Judgment (Docket No. 87) is GRANTED in part and DENIED in part. Defendant Ellis, as Administrator for the Estate of Donna Marie Ostendorf, is ordered to pay to Plaintiff the sum of \$140,531.68 from the Estate. In addition, Defendant Henry R. Ostendorf is ordered to pay to Plaintiff the sum of \$6,221.79. Plaintiff's Motion is denied as moot as to Defendant Friedman, Rodman & Frank, P.A.

The Clerk is directed to close the file. Any other pending Motions are denied as moot. The pretrial conference set for September 28, 2015, and the bench trial set for October 6, 2015, are canceled.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE